
GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 288 2012

DETERMINATION OF CLASS MERGERS TO BE EXCLUDED FROM CHAPTER 4 OF COMPETITION ACT, 2003

In terms of section 43 of the Competition Act, 2003 (Act No. 2 of 2003), I, with the concurrence of the Namibian Competition Commission, determine the class of mergers to be excluded from Chapter 4 of that Act, as set out in the Schedule.

H. GEINGOB
MINISTER OF TRADE AND INDUSTRY Windhoek, 23 November 2012

SCHEDULE

Definitions

1. In this notice, a word or an expression to which a meaning has been assigned in the Act and the Rules published under General Notice No. 41 of 3 March 2008 , has that meaning, and unless the context otherwise indicates -

"the Act" means the Competition Act, 2003 (Act No. 2 of 2003);

"the Rules" means the Rules published under General Notice No. 41 of 3 March 2008.

Class of mergers excluded from Chapter 4 of Act

2. Chapter 4 of Act does not apply to a merger if the value of that merger equals or exceeds both of the following values:

(a) if -

(i) the combined annual turnover in, into or from Namibia of the acquiring undertaking and target undertaking is valued below N$20 million;

(ii) the combined assets in Namibia of the acquiring undertaking and target undertaking are valued at less than N$20 million;

(iii) the annual turnover in, into or from Namibia of the acquiring undertaking plus the assets in Namibia of the target undertaking are valued at less than N$20 million; or

(iv) the annual turnover in, into or from Namibia of the target undertaking plus the assets in Namibia of the acquiring undertaking are valued at less than N$20 million; or

(b) if -

(i) the annual turnover in, into or from Namibia, of the target undertaking is less than N$10 million; or

(ii) the asset value of the target undertaking is less than N$10 million.

Calculation of assets and turnover of undertaking

3. For the purposes of section 43 of the Act, the assets and the turnover of an undertaking in, into or from Namibia, must be calculated in accordance with Annexure A.

Notification of merger in certain circumstances

4. (1) Despite paragraphs 2 and 3, the Commission may demand notification of a merger which falls below the compulsory notification threshold if the Commission considers it necessary to deal with the merger in terms of the Act.

(2) If subparagraph (1) applies, the merging or merged parties must submit a merger notification to the Commission within 30 days from the date of written demand by the Commission to do so.

(3) The Act and the Rules apply to a merger notification referred to in subparagraph (1).

ANNEXURE A

METHOD OF CALCULATION OF ASSETS AND ANNUAL TURNOVER OF UNDERTAKING

1. General accepted accounting principles apply

For the purposes of section 43 of the Act, the assets and the turnover, of an undertaking must, subject to the provisions of this notice, be calculated in accordance with Namibian generally accepted accounting practice (hereinafter referred to as "G.A.A.P.") or International Financial Reporting Standards (hereinafter referred to as "IFRS").

2. Valuation of assets

For the purpose of section 43 of the Act, the asset value of an undertaking at any time is based on the gross value of the undertaking's assets as recorded on the undertaking's balance sheet for the end of the previous financial year, subject to the following provisions -

(a) in particular -

(i) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;

(ii) the assets include all assets on the balance sheets of the undertaking, including any goodwill or intangible assets included in the balance sheets;

(iii) no deduction may be taken for liabilities or encumbrances of the undertaking; and

(iv) assets in Namibia includes all assets arising from activities in Namibia;

(b) if, between the date of the financial statements being used to calculate the asset value of an undertaking, and the date on which that calculation is being made, the undertaking has acquired any subsidiary undertaking, associated undertaking or joint venture not shown on those financial statements, or divested itself of any subsidiary undertaking, associated undertaking or joint venture shown on those financial statements -

(i) the following items must be added to the calculation of the undertaking's asset value if these items must in terms of G.A.A.P. or IFRS be included in the undertaking's asset value -

(aa) the value of assets recently acquired; and

(bb) any asset received in exchange for recently divested assets;

(ii) the following items may be deducted in calculating the undertaking's asset value if these items were included in the undertaking's asset value -

(aa) the value of recently divested assets at the date of their divestiture; and

(bb) any asset that has been shown on the balance sheet and has been subsequently used to acquire the recently acquired asset.

3. Calculation of annual turnover

(a) For the purpose of section 43 of the Act the annual turnover of an undertaking at any time is the gross revenue of that undertaking from income in, into or from Namibia, arising from the following transactions and events as recorded on the undertaking's income statement for the previous financial year, subject to subparagraphs (b), (c) and (d) -

(i) the sale of goods;

(ii) the rendering of services; and

(iii) the use by others of the undertaking's assets yielding interest, royalties and dividends;

(b) in particular -

(i) when calculating turnover the following amounts may be excluded -

(aa) any amount that is properly excluded from gross revenue in accordance with G.A.A.P. or IFRS;

(bb) taxes, rebates or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;

(ii) no adjustment is made for any amount that represents a duplication arising from transactions between the acquiring firm and the target firm;

(iii) revenue excludes gains arising from noncurrent assets and from foreign currency transactions; and

(iv) for banks and insurance undertakings revenue includes those amounts of income required to be included in an income statement in terms of generally accepted accounting practice, but excluding those amounts noted in item (i)(bb);

(c) if, between the date of the most recent financial statements being used to calculate the turnover of a undertaking, and the date on which that calculation is being made, the undertaking has acquired any subsidiary undertaking, associated undertaking or joint venture not shown on those financial statements or divested itself of any subsidiary undertaking, associated undertaking or joint venture shown on those financial statements -

(i) the turnover generated by recently acquired assets must be included in the calculation of the undertaking's turnover if this turnover must in terms G.A.A.P. or IFRS be included in the turnover of the undertaking; and

(ii) the turnover generated by recently divested assets in the immediately previous financial year may be deducted from the undertaking's turnover if this turnover has been included in the turnover of the undertaking;

(d) if the financial statements used as a basis for calculating turnover or the turnover included in terms of subparagraph (c)(i) are for more or less than 12 months, the values recorded on those statements must be pro-rated to the equivalent of 12 months.

4. Form of financial statements

Financial statements used as a basis for calculating assets or turnover of a undertaking must be the undertaking's audited financial statements **-**

(a) if, in terms of any law, the undertaking is required to produce such statements;

(b) if, the undertaking has audited statements for the relevant period; or

(c) where (a) or (b) does not apply, prepared in accordance with G.A.A.P. or IFRS.

MINISTRY OF TRADE AND INDUSTRY

No. 289 2012

DETERMINATION OF THRESHOLD OF ANNUAL TURNOVER OR VALUE OF ASSETS BELOW WHICH PART II OF CHAPTER 3 OF COMPETITION ACT, 2003, DOES NOT APPLY TO

In terms of section 24 of the Competition Act, 2003 (Act No. 2 of 2003), I, with the concurrence of the Namibia Competition Commission, determine in relation to undertakings, the threshold of annual turnover or value of assets below which Part II of Chapter 3 of that Act does not apply to, as set out in the Schedule.

H. GEINGOB
MINISTER OF TRADE AND INDUSTRY Windhoek, 23 November 2012

SCHEDULE

Definitions

1. In this notice, a word or an expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

"prescribed criteria" means the criteria for determining a dominant position in the market referred to in section 25 and prescribed in Rule 36 of the Rules published under General Notice No. 41 of 3 March 2008;

"the Act" means the Competition Act, 2003 (Act No. 2 of 2003).

Application of Part II of Chapter 3 of Act

2. Part II of Chapter 3 of Act applies to an undertaking -

(a) whose annual turnover in, into or from Namibia is at or above N$10 million; or

(b) whose assets in Namibia are valued at or above N$10 million,

but does not apply to an undertaking -

(i) whose annual turnover in, into or from Namibia is valued below N$10 million; or

(ii) whose assets in Namibia are valued below N$10 million.

Method of calculation of assets and turnover of undertaking

3. For the purposes of section 24 of the Act, the assets and the annual turnover of an undertaking in, into or from Namibia must be calculated in accordance with the provisions set out in the Annexure to this notice, which calculation is based on the prescribed criteria.

ANNEXURE

METHOD OF CALCULATION OF ASSETS AND ANNUAL TURNOVER OF UNDERTAKING

1. General accepted accounting principles apply

For the purposes of section 24 of the Act, the assets and the turnover, of a undertaking must be calculated in accordance with Namibian generally accepted accounting practice (hereinafter referred to as "G.A.A.P.") or International Financial Reporting Standards (hereinafter referred to as "IFRS").

2. Valuation of Assets

For the purpose of section 24 of the Act, the asset value of an undertaking at any time is based on the gross value of the undertaking's assets as recorded on the undertaking's balance sheet for the end of the previous financial year, subject to the following provisions -

(a) in particular -

(i) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;

(ii) the assets include all assets on the balance sheets of the undertaking, including any goodwill or intangible assets included in the balance sheets;

(iii) no deduction may be taken for liabilities or encumbrances of the undertaking; and

(iv) assets in Namibia includes all assets arising from activities in Namibia;

(b) if, between the date of the financial statements being used to calculate the asset value of an undertaking, and the date on which that calculation is being made, the undertaking has acquired any subsidiary undertaking, associated undertaking or joint venture not shown on those financial statements, or divested itself of any subsidiary undertaking, associated undertaking or joint venture shown on those financial statements -

(i) the following items must be added to the calculation of the undertaking's asset value if these items must in terms of G.A.A.P. or IFRS be included in the undertaking's asset value -

(aa) the value of assets recently acquired; and

(bb) any asset received in exchange for recently divested assets;

(ii) the following items may be deducted in calculating the undertaking's asset value if these items were included in the undertaking's asset value -

(aa) the value of recently divested assets at the date of their divestiture; and

(bb) any asset that has been shown on the balance sheet and has been subsequently used to acquire the recently acquired asset.

3. Calculation of annual turnover

(a) For the purpose of section 24 of the Act the annual turnover of an undertaking at any time is the gross revenue of that undertaking from income in, into or from Namibia, arising from the following transactions and events as recorded on the undertaking's income statement for the previous financial year, subject to the provisions of subparagraphs (b), (c) and (d) -

(i) the sale of goods;

(ii) the rendering of services; and

(iii) the use by others of the undertaking's assets yielding interest, royalties and dividends;

(b) in particular -

(i) when calculating turnover the following amounts may be excluded -

(aa) any amount that is properly excluded from gross revenue in accordance with G.A.A.P. or IFRS;

(bb) taxes, rebates or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;

(ii) no adjustment is made for any amount that represents a duplication arising from transactions between the acquiring firm and the target firm;

(iii) revenue excludes gains arising from noncurrent assets and from foreign currency transactions; and

(iv) for banks and insurance undertakings revenue includes those amounts of income required to be included in an income statement in terms of generally accepted accounting practice, but excluding those amounts noted in item (i)(bb);

(c) if, between the date of the most recent financial statements being used to calculate the turnover of a undertaking, and the date on which that calculation is being made, the undertaking has acquired any subsidiary undertaking, associated undertaking or joint venture not shown on those financial statements or divested itself of any subsidiary undertaking, associated undertaking or joint venture shown on those financial statements -

(i) the turnover generated by recently acquired assets must be included in the calculation of the undertaking's turnover if this turnover must in terms G.A.A.P. or IFRS be included in the turnover of the undertaking; and

(ii) the turnover generated by recently divested assets in the immediately previous financial year may be deducted from the undertaking's turnover if this turnover has been included in the turnover of the undertaking.

(d) if the financial statements used as a basis for calculating turnover or the turnover included in terms of subparagraph (c)(i) are for more or less than 12 months, the values recorded on those statements must be pro-rated to the equivalent of 12 months.

4. Form of financial statements

Financial statements used as a basis for calculating assets or turnover of a undertaking must be the undertaking's audited financial statements -

(a) if, in terms of any law, the undertaking is required to produce such statements; or

(b) if, the undertaking has audited statements for the relevant period; or

(c) where (a) or (b) does not apply, prepared in accordance with G.A.A.P. or IFRS.
